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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,684	01/04/2002	Robert P. Schnall	01/22882	7802

7590 10/20/2005

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EXAMINER

NASSER, ROBERT L

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/019,684	Applicant(s) SCHNALL, ROBERT P.	
	Examiner Robert L. Nasser	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-31 is/are allowed.
- 6) ☒ Claim(s) 32-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 32-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Goor et al. Goor et al shows a examiner submits that there are 2 ways to view Goor. Claims 32 and 34 are rejected in that in figures 2-4, Goor shows a device with a housing having 2 sections 2 sections, a proximal and distal section, a sensor, and a pressurizing means. It is the examiner's position that the flexible rubber used for the membranes in Goor is a sponge cushion. Applicant on page 13, line 18 of the specification states that a sponge cushion may be made from a sponge rubber or the like. It is the examiner's position that the flexible membrane is a "sponge rubber or the like. Claim 33 is rejected for the reasons given above.

Claims 32 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Muz. Muz shows a device having a housing 1 for receiving a patient's body pad, having a distal section including bladder 7 and a proximal section without the bladder, pressurizing means 5, that are equivalent to applicant's, for pressurizing the distal section, and sensor 15 and 17, where the proximal end section includes a soft elastic

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silicon rubber inner wall. Applicant on page 13, line 18 of the specification states that a sponge cushion may be made from a sponge rubber or the like. It is the examiner's position that a soft, elastic silicon rubber wall a "sponge rubber or the like."

Claims 1-31 are allowable in that none of the art shows 3 separate but contiguous sections, each with a separate pressurized chamber, as recited.

Applicant's arguments filed 6/30/2005 have been considered, but are not deemed to be persuasive.

Applicant has asserted that a sponge rubber cushion is normally considered to be aerated or foamed or basically have a cellular construction. The examiner notes that the Federal Circuit has established that applicant may not provide a limiting definition of a term after filing. As such, the term "sponge cushion" must be given its broadest reasonable interpretation by the examiner. One definition of sponge is a rubber having the properties of a sponge.

At present, applicant has disclosed that the sponge cushion may be made of sponge rubber or the like. The sponge cushion in applicant's specification replaces the pressurized chamber in the proximal portion of the finger probe. The purpose of the chamber is simply to compress the finger to hold it in place. There is no disclosure of why a cellular construction is required and the examiner can fathom no reason that such a construction would be required. It seems that the only features important in the sponge cushion of softness and compressibility. One definition of sponge is substance, as rubber ..., that has sponge-like qualities (See. Webster's II New Riverside University Dictionary definition 2. The soft elastic rubber of Muz and the membrane of Goor are

both compressible and soft. As such, they are sponge-like qualities. Alternatively, it is the examiner's position that the soft, elastic natural of silicon rubber falls with the realm of "sponge rubber or the like" and meets the definition of a sponge.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is (571) 272-4731. The examiner can normally be reached on Mon-Fri, variable hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert L. Nasser
Primary Examiner
Art Unit 3736

RLN
September 19, 2005



ROBERT L. NASSER
PRIMARY EXAMINER